

CrowdFund Intermediary Regulatory Advocates
1345 Avenue of the Americas
New York, NY 10105
Telephone: (212) 370-1300

Via Electronic Mail

January 10, 2016

Brent J. Fields
Assistant Secretary
U.S. Securities and Exchange Commission
100 F Street, N.E.
Washington, D.C. 20549-1090

Re: File No. S7-22-15

Dear Mr. Fields:

This letter is submitted on behalf of the Crowdfund Intermediary Regulatory Advocates (CFIRA) in response to the proposed notice filing requirements for Rules 147 and 504 (the “Proposed Rules”). Rule 147, creates a new exemption in addition to modernization of existing Rule 147 and Rule 504 increases offering limitation to \$10 million. CFIRA would first like to commend the Staff and the Commission for responding to changes in state regulation and capital formation practices in a pro-active and forward thinking manner. We believe that the proposals, if adopted, will broaden the capital-raising options of early-stage and small companies with no loss of investor protection.

CFIRA is a crowdfunding trade organization that lobbies and advocates for regulations that will support the crowdfunding industry in connection with Title II, Title III and Title IV of the JOBS Act. CFIRA’s role is to protect the interests of investors and issuers, and advance the common business interest of intermediaries and third party service providers in the securities industry. Our members comprise intermediaries (broker-dealers and funding portals), issuers, investors, and third party service providers who are engaged in or who intend to engage in business under Titles II, III and IV.

Rule 147

1. CFIRA supports the creation of a new Rule 147 as a standalone exemption under the Commission’s general authority. However, many of the recently created state exemptions for regulation crowdfunding are primarily based on Section 3(a)(11) of the Securities Act. Where these exemptions are created by state statute as opposed to federal regulation, state law will need to be revised in order to allow issuers to take advantage of the Rule as proposed. Approaches to governance, adoption of rules and holding regular meetings across states differ. In order to permit issuers in as many states as possible to take advantage of the new Rule, and also to prevent

issuers from losing the guidance and protection provided by Rule 147's safe harbor if their states' legislatures do not quickly amend their crowdfunding statute, CFIRA recommend the following:

- Adopt new Rule 147A as proposed (with the changes suggested below) under the general authority; and
 - Amend existing Rule 147 to mirror as closely as possible the new Rule.
2. Eliminate the current restriction on offers, as proposed, the Commission's proposal to eliminate the current restriction on "offers" while continuing to require that sales be made only to residents of the issuer's state. No investor protection provisions are compromised by permitting investors to hear about securities offerings that they are not permitted to participate in, and the ability to use the internet and other means of communication enhances issuers' ability to access capital efficiently.
 3. Offering Materials, in general, the requirement that all offering materials include a prominent disclosure that sales may be made only to residents of the issuer's state. However, appropriate concessions should be made to permit use of space-constrained social media communications such as Twitter.
 4. Eliminate the current requirement that the issuer be organized in the state where sales occur, the creation of an exemption that is not dependent upon the state of incorporation or organization of the issuer. There are valid business reasons for incorporating or organizing in states such as Delaware, and the fact that an issuer does so does not in any way diminish its connection to the state in which its principal place of business is located.
 5. Statutory provisions of Section 3(a)(11), may limit the ability of the Commission to amend existing Rule 147 to permit issuers incorporated out of state to rely on the Rule, we encourage the Commission to consider whether there might be an alternative reading of the statute, since this outdated requirement results in many companies being precluded from intrastate capital-raising.
 6. Do not impose offering size or investment size limitations, imposing offering size or investment size limitations on Rule 147 is not appropriate because the current Rule has no such requirements. Imposition of such limits is antithetical to the intrastate exemption, which assumes that states themselves are best placed to decide what limits are appropriate for the protection of their investors. States should be free to decide for themselves whether some combination of offering and investment limits, or no limits at all, are most appropriate for their investors.
 7. Adopt the alternative "doing business" definitions, as proposed, CFIRA supports the revised formulation for determining whether an issuer is "doing business" in a state. We believe that some guidance as to whether financial assets are to be included in the "asset" test (thus possibly forcing an issuer to use an in-state bank in circumstances in which it would not otherwise do so) would be appropriate.
 8. We also support the proposed limitations on making an intrastate offering in a different state than the state in which a previous intrastate offering took place.
 9. State Residency for Investors: requiring a "reasonable belief" as to investors' state residency, is supported, as is eliminating the requirement of a written representation as to a potential investor's residence. We agree with the Commission's concern that obtaining such a representation would encourage issuers to take a "check the box" approach. However, we are concerned that eliminating the requirement might signal to issuers that an even less rigorous method than checking the box (for example, deemed representations) might be acceptable, whereas it is

apparent from the commentary in the Proposing Release that this is not the case. It is clear from the discussion of state drivers' licenses, utility bills and the like, that the Commission would require substantive steps to be taken to establish a "reasonable belief". For that reason, we support the creation of an explicitly non-exclusive safe harbor setting out the means by which a reasonable belief may be established. This should include the circumstances in which an issuer may rely on the steps taken by a third party (service provider or intermediary). We also urge the Commission to consider whether, when a state imposes its own substantive rules as to determination of residence, the federal rules should permit issuers and intermediaries to follow only the state rules.

10. Reduce the nine-month coming to rest requirement to six months; we believe that a period of six months is adequate to establish that securities have come to rest in a state. The nine-month period does not exist elsewhere in securities law, and the potential exists for confusion. Allowing the six-month period, by analogy to parts of Rule 144, is more appropriate.
11. We support measuring the coming to rest period from the time at which the securities are acquired by a specific investor. Crowdfunding offerings by their nature can take several months to complete.
12. Securities sold under Rule 147 should not be treated as "restricted" under Rule 144(a)(3). The "coming to rest instate" purpose of the nine-month restriction is sufficiently distinct from the policy considerations underlying Rule 144. We support no longer conditioning the availability of the exemption on investor compliance.

Rule 504

CFIRA supports the increase of offering limitation for Rule 504, and advocates to increase the capital raise amount to \$10 million; this will help to re-invigorate early stage capital formation. Information received from one of the industry's service providers, CrowdCheck, indicates the coordinated review process in the context of a Regulation A offering has significant cost implications with respect to compliance involved in state registration and review process, and Rule 504 will only be of interest to issuers if they can raise enough capital to offset this burden.

1. Bad Actor disqualification: we support the imposition of Bad Actor disqualifications on Rule 504 offerings.
2. Applicability of Section 12(g) Exchange Act registration requirements for rules 147 and 504, in the event the proposed changes are adopted, both Rule 147 and Rule 504 will provide attractive options for early-stage capital formation. The utility for a crowdfunding offering will be limited if the offering results in an issuer acquiring 500 or more shareholders of record who are not accredited. Crowdfunding investors are unlikely to have the means to invest \$2,000 or more, and thus a relatively modest \$1 million intrastate crowdfunding offering will need to call on more than 500 investors. If accessing a large number of investors results in a company being required

to register a class of securities under Section 12(g) of the Securities Exchange Act of 1934,¹ issuers may have to favor accredited investors or investors who can invest large amounts of money. From a policy point of view this would be regrettable and may have unintended consequences for access to capital and stimulating the economy. The purpose of crowdfunding is spur capital formation, aid job growth and allow small and medium enterprising businesses the ability to broaden their reach beyond friends and family while fostering investor confidence through transparency, due diligence and comparison of choice. CFIRA recommends adding a conditional exemption from Section 12(g) would be appropriate. Appropriate conditions might include compliance with any state reporting requirements and asset or revenue tests, but the conditions should not be so onerous as to make it likely that issuers will inadvertently fall out of compliance.

Conclusion

One of CFIRA's goals for the industry to ensure that the marketplace can mature in a healthy manner with the right balance of investor protections while fostering innovation, spurring capital formation and increasing job creation. The members of CFIRA remain available for further discussions relating to Rules 147 and 504. We look forward to making investing a success for both investors and entrepreneurs.

Respectfully Submitted,



Kim Wales
Chief Executive Officer, Wales Capital
Executive Board Member, CFIRA

¹ Assets of even small enterprises may exceed the \$10 million specified in Section 12(g), and increases in the offering limit of Rule 504 will increase this likelihood.